THE REFORM OF OUR STATE GOVERNMENTS.

In accordance with the provisions of the Constitution of the State of New York, a convention is to be held in the month of May next, to decide whether any, and if so what amendments shall be recommended for adoption by the people of the State. It is a grave question whether this is the best or even a desirable mode of revision. Such a convention consists of a large body of men without leadership or authoritative guidance of any kind. They are all upon a precisely equal footing, no member being bound to any deference or submission to any body, except to an elected presiding officer as to forms of business, or to the decision of a majority, however that majority may be formed, or by whatever principles of action it may be influenced. The result will be, therefore, that the whole constitution will be thrown into the crucible. Propositions may be made to recast any or every provision in it, the good as well as the bad. There will be no limit to the range of discussion, which will have no light of official administration, and no personal responsibility for results, so that even if the amended constitution, overcoming the complete indifference of the people, should be accepted by them, the only thing to be said of it would be that it exists.

The other mode of amendment offered by the constitution seems much more sensible and practical, that by which any special provision after passing two legislatures is submitted to the people. By this is secured the highly desirable result that no change shall be made, or even considered, till there is a positive demand for it, and that the change, if any, shall be made in the particular point to which the demand applies and in no other. By the requirement of passage through two legislatures, time is given for the bringing forward and

the consideration of arguments *pro* and *con*, and when finally the question is taken to the people, they will vote more intelligently, and with more interest, upon a single definite question than upon the approval of a complex instrument as to which they do not clearly understand what changes have been made or why they should have been made.

Still the convention is to take place and is to be dealt with as a fact, and the practical question is, therefore, how can the best results be obtained from it. The first step is to arrive at a due sense of the importance of the subject. We hear a great deal of the Federal government and of the government of cities; but how little attention is paid to the State governments, which are yet the most important of the three.

Mr. Bryce, in his "American Commonwealth," says:

"An American may, through a long life, never be reminded of the Federal government, except when he votes at Presidential and Congressional elections, lodges a complaint against the post-office, or opens his trunk for a custom house officer on the pier at New York when he returns from a trip in Europe. His direct taxes are paid to officials acting under State laws. The State, or a local authority constituted by State statutes, registers his birth, appoints his guardian, pays for his schooling, gives him a share in the estate of his father deceased, licenses him when he enters a trade (if it be one needing a license), marries him, divorces him, entertains civil actions against him, declares him a bankrupt, hangs him for murder. The police that guard his house, the local boards which look after the poor, control highways, impose water rates, manage schools—all these derive their legal powers from the State alone. Looking at this immense compass of State functions, Jefferson would seem to have been not far wrong, when he said that the Federal government was nothing more than the American department of foreign affairs."

Hon. Seth Low in an address upon municipal government has pointed out that it depends almost wholly upon that of the State. The State has power to grant a city charter, to modify it or take it away. It can enlarge or contract at its pleasure the power of the local authorities. It can constitute and organize them, within the lines of the constitution, as

it sees fit. It can make these authorities elective by the people, or appointed from the State Capitol, consisting of single individuals, or working by boards and commissions.

In his last message to the Legislature, Governor Flower said:

"Under our present system of conveying municipal powers by legislative charter, the Legislature must always determine both the extent of those powers and their nature. Any changes in these respects must come by charter amendment or by special statute—but it must come through the Legislature. Some charters confer greater powers upon municipalities than others, but all spring from the same source, and any changes, good or bad, must come from the same source. This system throws great responsibility upon the Legislature."

In the *Atlantic Monthly* for February, 1894, is an article by Mr. Henry Childs Merwin upon the Tammany government of New York. In it he says:

"The city of New York is controlled very largely by the State Legislature. . . . The State Legislature then and not the aldermen constitutes the real legislative body of the city. . . . Even for the laying out of a new street recourse must be had to Albany. . . . Last year Tammany had a majority both in the Assembly and the Senate, and this very much simplified Mr. Croker's task in directing legislation. He was able to pass or reject bills by telephone."

On all sides are springing up associations for the reforming of city government, and the recent meeting of the Municipal League in Philadelphia was an appeal for concert of action throughout the United States, yet what word do we hear of any effort to reform State government,* or any preparation for so important an event as a convention which is to consider the whole subject of the Constitution of the State of New York?

For many reasons, the State governments do not attract so much attention as those either of cities or the nation. They do not occupy such a position in the eyes of the world as that at Washington. On the other hand their very light burden of taxation is much less felt than the heavier one of the cities. The objects of State administration are more

[* Cf. Professor Patten's "Decay of State and Local Government."—ANNALS, Vol. I, p. 26, July, 1890.—EDITORS.]

widely scattered and less visible. The electorate is better, not merely because it includes the country districts, but because the larger the voting area, the freer will be the result from personal jobbing and intrigue. The Legislature sits but for a portion of the year, and, under the present system of committee government, out of sight and mostly out of mind of its constituents. But apart from these and similar considerations, and taking as an example the government of Massachusetts, with which the present writer is more familiar, he believes that its working organization is decidedly worse than that of the city of Boston, and he has a strong impression that the same is true of the other States and cities of the United States.

If there is one lesson to be drawn from the history of popular government in the last hundred years, it is of the danger arising from the preponderance in power of legislative bodies. It is to be remembered that government representative of universal suffrage never existed in the world till this century. It is as purely a modern discovery as the use of electricity and steam, and the machinery for working it was just as little known. Already the Long Parliament in England gave a foretaste of what was impending when it came to its end through the military rule of Cromwell. The anarchy of the legislative assemblies which undertook to govern after the downfall of the old French monarchy, led first to the despotism of the Committee of Public Safety, and then to that of Napoleon. After three-quarters of a century of preponderant executive power, the third republic has held its own longer than any government since the first revolution, but it is drifting to almost visible shipwreck from the weakness of executive power and the predominance of a legislature split into factions and torn by anarchy.

The danger was clearly enough perceived a century ago. Madison said in the convention of 1787: "Experience proves a tendency in our governments to throw all power into the legislative vortex. The executives of the States are little

more than ciphers; the legislatures are omnipotent. If no effectual check can be devised on the encroachments of the latter, a revolution will be inevitable," and again: "The tendency of republican governments is to aggrandize the legislature at the expense of the other departments." So, in the *Federalist*, speaking of the State constitutions, he says: "The legislative department is everywhere extending the sphere of its activity and drawing all power into its impetuous vortex. . . . The founders of our republic seem never to have recollected the danger from legislative usurpations, which, by assembling all power in the same hands, must lead to the same tyranny as is threatened by executive usurpations." And he quotes from Jefferson's "Notes on Virginia" the following passage relative to the same defects in the Virginia constitution: "All the powers of the government—legislative, executive and judiciary—result to the same legislative body. The concentrating these in the same hands is precisely the definition of despotic government. It will be no alleviation that these powers will be exercised by a plurality of hands and not by a single one." So in the convention of 1787 "Wilson, of Pennsylvania, was most apprehensive that the legislature, by swallowing up all the other powers, would lead to a dissolution of the government; no adequate self-defensive power having been granted either to the executive or the judicial departments."

Judge Story says: "There is a natural tendency in the legislative department to intrude upon the rights and absorb the powers of the other departments of the government. A mere parchment delineation of the boundaries of each is wholly insufficient for the protection of the weaker branch, as the executive unquestionably is, and hence there arises a constitutional necessity of arming it with powers for its own defence." And Smyth in his lectures on modern history, written in 1811, from an English standpoint, says: "If there results to America a grand calamity and failure of the whole, it can only accrue from the friends of liberty not venturing

to render the executive power sufficiently effective—the common mistake of all popular governments."

"The legislature," says Bancroft in his "United States," "was the centre of the system. The governor had no power to dissolve it or either branch. In most of the States all important civil and military officers were elected by the legislature. The scanty power intrusted to the governor, wherever his power was more than a shadow, was still further restrained by an executive council. Where the governor had the nomination of officers, they could be commissioned only by consent of the council."* Of this antiquated instrument for emasculation of the executive, I believe that Massachusetts can boast, with two exceptions, the only surviving example. We may conclude this evidence with a quotation from Bagehot's "English Constitution:" "A legislative chamber is greedy and covetous; it acquires as much, it concedes as little as possible. The passions of its members are its rulers; the law-making faculty, the most comprehensive of the imperial faculties is its instrument; it will take the administration if it can take it."

Not only has the century since elapsed fully justified all these predictions, but it has developed the inability, which was not then so obvious, of the legislatures, after they have seized the reins of government, to carry it on. It has shown that these large bodies of men, without discipline and without leaders, have almost no capacity for good, but unbounded for evil; that, however high may be the character of the individual members, the body as a whole falls, first into weakness, then into anarchy and then into corruption; that it becomes a prey to faction and intrigue, that good men are more reluctant and bad men more eager to enter it. This part of the subject cannot be summed up better than by a reference to the remarkable work of Professor Woodrow

* I am indebted for these quotations to a pamphlet upon "American Constitutions," by Horace Davis, of San Francisco, published by the Johns Hopkins University in 1885.

Wilson on "Congressional Government," which, though written only for the condition of things at Washington, is just as applicable to the forty-four States, because the evil in them is precisely the same in kind, and even exaggerated in degree, the predominance of the legislature.

That the people throughout the country have come to distrust and fear the legislatures is evident from the tendency of constitution making and amendment, which is steadily toward restricting the powers of the legislatures. According to the pamphlet of Mr. Davis, already referred to, out of thirty-eight State constitutions in 1885, twenty-five allowed the legislature to come together only in every other year; eighteen limited the length of the session to periods varying from forty to ninety days;* in eleven, the legislature in special sessions could take up only the subjects named in the call; twenty-five required that all bills should be read on three separate days; in twenty-seven, bills must contain only one subject, expressed in the title; six prohibited general or salary bills from containing anything else; twenty-three prohibited amendment of any act by title, the full text must be quoted; nineteen required that all bills must be passed by a majority of the members elected, voting by ayes and noes; thirty embodied in their constitutions provisions forbidding special legislation, twenty totally and ten partially. But such attempts must fail to effect any permanent or adequate reform, much for the same reason that it is useless to try to repair a leaking dam by plastering it from the outside.

The same tendency is shown in efforts to improve the character of the legislatures. Such are minority and proportional

*It is singular that in Europe the constitutional tendency is to fix a *minimum* and not a *maximum* for the length of legislative sessions. Thus in France it must be not less than five months; in Sweden four months, unless the popular Chamber votes to adjourn earlier; in Portugal, not less than three months, and the same in Japan; in Belgium forty days; in the Netherlands twenty days. This is, of course, a guarantee against executive power. In Denmark, however, the guarantee is taken against the Legislature and not against the Executive, the former being forbidden to remain in session longer than two months without the consent of the King. See "*Traité de Droit electoral et parlementaire*," by Eugene Peirre, Sec. 497.

representation, compulsory voting, female suffrage, acts to prevent bribery and corruption, urgent appeals to the voters to attend the primaries, better education of the people, and so on. But these, again, cannot reach the want, because the main difficulty is not in the composition of the legislatures, but in their usurpation of executive power, and the fatal effects upon their character of their attempts to wield it. A notable instance of this appears in the so-called Australian ballot, which it is hardly an exaggeration to speak of as one of the best general political measures introduced since the adoption of the constitution. It has done wonders for the purity of elections, but it has not in the slightest degree affected the inability of the legislatures to take the place of the executive power, which yet they insist upon doing.

The real remedy is to draw the line clearly between executive and legislative power, to assign to each branch that which properly belongs to it and to secure each from encroachment by the other, by giving to both equal opportunities of defending their rights before that which, in this country, we regard as the final tribunal, the people. So far as my knowledge goes, no positive attempt in this direction has ever been made in any State government. The nearest approach to it is in allowing the governor to veto items of appropriation bills instead of limiting his veto to the whole. The same thing cannot, however, be said of the cities. There the heavy hand of necessity has compelled the inhabitants to look somewhat more closely into the facts with which they have to deal. It is not only an interesting fact, but a great simplification of the problem of government, that the difficulty in the cities is precisely the same as with the States and the nation, the usurpation by the legislature, which is nearly enough represented by the council or board of aldermen, of executive power, and the consequent weakness and want of responsibility in administration.

The drift of public opinion is, therefore, decidedly, if cautiously and timidly, toward the increase of executive

power. The greatest progress has been made in New York and Brooklyn, and notably in the latter, by giving to the mayor the full power of appointment to office, without confirmation by the aldermen, and by establishing single headed departments in the place of boards or commissions. The danger seems now of erring in the other direction, and of failing to guard this increase of power by a corresponding increase of responsibility. Hon. Seth Low, the greatly respected ex-mayor of Brooklyn, has stated in a public address that the functions of the board of aldermen have been gradually reduced till there is hardly anything left for them to do. This may be said to be a serious political mistake, because the action of a legislature is just as important as that of the executive, and almost as necessary for guarding against abuse of power.

Here we are confronted by the question, What is executive and what legislative power? All our political doctrines are based upon the separation of powers, but it is difficult to point to any line drawn between them. Thus the Constitution of Massachusetts says with great emphasis:

> ARTICLE XXX. In the government of this commonwealth, the legislative department shall never exercise the executive and judicial powers or either of them: the executive shall never exercise the legislative and judicial powers or either of them: the judicial shall never exercise the legislative and executive powers or either of them: to the end that it may be a government of laws and not of men.

Yet it nowhere lays down any working definition of the powers as to which it is so solemn in its injunctions. The division is, therefore, practically left to the legislature, which does not fail, in accordance with the principles above indicated, to appropriate the lion's share. The people see and know but very little of the governor, who never addresses them directly, unless in the formal speeches of occasions of ceremony; and they see still less of the judiciary. It is the legislature which fills the public eye, and poses as the guide, philosopher and friend. As we have seen, a legislature is

always disposed to take possession of the government. We find further, that every opportunity is given to it for doing so. That it has done so, in every case, with the exception of the cities mentioned, is the gravest political fact with which the country has to deal.

Without any ambitious pretence of settling principles of jurisprudence, we may be permitted, for the purposes of this paper, to establish boundaries of the two powers. The first business of the executive is to carry on the government, to attend to the administration of police, roads, schools, charities, prisons, etc., and to be responsible for it. There will probably be no dispute about that. It is for the legislature to make the law, for the judiciary to interpret it, and for the executive to carry it into effect. But that this may be done it is necessary that whatever laws are made should be adapted to their purpose. If they are contradictory to each other, or omit necessary provisions, they cannot be administered at all. If they are framed with a view to private interest, or with any other purpose than promoting the public welfare, then the executive will fail in its duty of attending to that welfare.

In every business enterprise of private life, the agent who is to carry it on expects to make his own rules subject to the approval of his owners, or if he accepts their rules, to ask for such amendment as he thinks necessary. No directors or owners would think of making rules, unless such as were established and tested by long experience, without the intervention of the manager. The guidance and the conduct of legislation is therefore just as much executive work as administration itself. It is the part of the executive to submit such projects of law as it thinks to be necessary for the conduct of administration, and to ask at once for the law and the means of administering it. It is for the legislature to discuss and accept or reject those laws and to grant or refuse the money which they involve. Under our present methods, not only is the executive excluded from proposing

laws at all, but the power is open to every individual member of the legislature, and any one of 200 or 300 men can, if he pleases, propose as many laws on as many different subjects. It is evident, therefore, if we take only one point of view, that such laws will not be adapted to the wants of administration, in which members are not directly interested, and for which they are not at all responsible, but to meet the pressure of private and local interests among their constituents. And this brings us to a very delicate question. By the vast mass of our people the executive veto is regarded as the palladium of our liberties, and to question its value is like questioning the authority of Scripture to a Calvinist of the strictest type. And yet, if one thinks of it, does it not seem the height of absurdity that the head of a complex administration should have no power with regard to rules except to say what he does *not* want? That he should be obliged to wait until 200 or 300 men, under pressure of a great many powerful motives besides the wants of administration, can agree as to what they would like, and then be limited to saying whether or not it will meet the public necessity, his objection being after all of no avail, if an increased proportion of the body insists upon forcing its will upon him? It is often remarked that the veto in Great Britain has never been exerted since the reign of Queen Anne. In fact the veto is applied more or less, every year, not indeed by the executive, but by parliament to which it properly belongs. At least in measures of public interest, the initiative of legislation should be entirely with the executive, and not with members of the legislature. This does not imply any increase of power in the former, as no measure could be passed and no money appropriated without full discussion and explained vote of the legislature, in fact to a much greater degree than now; nor would anything prevent members either singly or by majority from urging the executive to bring forward measures upon any particular subject. What it would prevent would be the bringing forward any

number of measures upon any number of subjects, all at the same time, with no official precedence among them, and of which the fate must depend upon compromise, lobbying and intrigue.

Another element in the defence of executive power against encroachments of the legislature is due subordination and discipline in the ranks of administration. In New York, by the constitution of 1877, as in Massachusetts, the chief officers of the State, the secretary of State, the comptroller, the treasurer and the attorney-general are elected by the people, separately from the governor. He has, therefore, no control over them, as they have none over each other. Administration under such conditions is simply impossible. There is a general conviction that this separate election by the people is the true democratic method. If, by that phrase, we mean giving effect to the will of the people and securing good government for them, nothing can be more undemocratic. What it really does, is to secure the perquisites of office for active politicians, to make the executive offices subject to the same conditions as seats in the legislature, regardless of the effect upon administration, and to make the executive officials the obedient instruments of party managers in the legislature; which, indeed, is in the eyes of that body the true democratic theory of government. In a really democratic system there should be one executive head, with every subordinate appointed by and responsible to him, so that the people can approve or reject, can maintain or change the results of administration by simply changing the head. The deadlock of administration, resulting from separate elective offices, has been met in a curious way; to some extent in nearly all the States, but in none, perhaps, so much as in Massachusetts. The legislature has proceeded to set up a number of commissions, and in defiance of the constitution to hand over to them the whole of the executive government except that portion which it has thought fit itself to retain. Notwithstanding the supposed democratic importance of separate election, these

commissions are filled by the appointment of the governor, though to neutralize this terrible power and to keep the firm political grip upon them, both appointments and removals are made subject to confirmation by a majority of the senate, or in Massachusetts, of the executive council, as thoroughly a political body as the legislature itself. Moreover, these commissions are renewable by one member each year, so that in case of those having five or more members, no governor has ever appointed more than a bare majority and that after two or three years of office. All their methods and duties are prescribed by the legislature, so that the governor has really no more control over them than over the other State officers. They are impersonal, act in secret and are responsible neither to the governor, nor the legislature, nor the people, about as undemocratic a system as it is possible to imagine, its one merit in the eyes of the legislature being, that it is beyond any independent control by the executive, while perfectly available as an instrument for political purposes by the legislature. It must be confessed that the evil of a bad system has been in the past largely corrected by placing the commissions in the hands of men of the highest character, who, without pay, without hope of gaining even reputation, have devoted themselves to the public service from a pure sense of duty. As the system has been developed, however, salaries have become attached to the places, while, as they are shielded from all responsibility, they can easily be used for illicit gain. For both reasons they are becoming an object of ambition to political workers, and as fast as these establish a foothold they will drive out the better class, who will, indeed, work hard for the public service without reward, but who will not bear the taint of evil deeds, which they cannot prevent, and of which they must be the accomplices. As Hon. Seth Low has truly said, "State commissions for any other purposes than enquiry are the most dangerous of bodies because they exercise authority without responsibility."

In these two respects the federal administration stands out sharply against those of the States and cities, in having one man in every place, and all appointed, down to the lowest position, directly from the president, who is the single member of the whole system holding his office by popular election. Two defects are, however, common to it with those of the States and cities, the confirmation of executive appointments by some legislative authority, and the exclusion of the executive from any voice in legislation. Almost equal to the reverence for the veto is the tenacity with which our people cling to the idea of confirmation of the appointments made by the president, governor or mayor by the senate, council or aldermen. Yet, so far from being a security for good administration, it is almost certainly fatal to it. It deprives the executive at once of control over administration and of responsibility for it. It converts the legislature from critics of the executive power and from enforcing responsibility, into sharers of that power and diffusing and weakening responsibility. It compels the executive to make appointments, not with a view to the wants of government, but to those of members and the most influential of their constituents. It is the heaviest of all obstacles to civil service reform, as will readily appear from a review of the recent history of the United States Senate. As has been remarked, the greatest forward step which has been made, not only in city government, but in any government in this country since the adoption of the Federal constitution, was made in Brooklyn in 1880, when the full power of appointment was given to the mayor, without confirmation by anybody. This example was followed in New York in 1884, these two being the only instances, within my knowledge, throughout the whole United States, while even here the power of removal, which seems to be its necessary complement, was jealously withheld. No doubt, bad mayors have still been chosen in both cities, but it has been made much more clear who were good and who bad mayors, and has brought the responsibility

home to the people, except so far as other defects of organization have still obscured the problem. Moreover, it has made good mayors possible, which they were not when the best men were powerless to control administration, and must stand condemned before the whole city for bad government, which they were wholly unable to prevent. The removal of such a restriction is quite as important for the States as for the cities.

The most important of all the means of readjusting the balance between the powers is to give to the executive the same opportunity of pleading his cause and defending his rights before the people that the legislature has.

On the fourth of February, 1881, a committee of eight members of the United States unanimously recommended a bill as follows:

"That the Secretary of State, the Secretary of the Treasury, the Secretary of War, the Secretary of the Navy, the Secretary of the Interior, the Attorney-General, and the Postmaster-General shall be entitled to occupy seats on the floor of the Senate and House of Representatives, with the right to participate in debate on matters relating to the business of their respective departments, under such rules as may be prescribed by the Senate and House respectively.

"SEC. 2. That the said secretaries, the Attorney-General, and the Postmaster-General shall attend the sessions of the Senate on the opening of the sittings on Tuesday and Friday of each week, and the sessions of the House of Representatives on the opening of the sittings on Monday and Thursday of each week, to give information asked by resolution, or in reply to questions which may be propounded to them under the rules of the Senate and House; and the Senate and House may, by standing orders, dispense with the attendance of one or more of said officers on either of said days.

"The first section provides for a voluntary attendance, to take part in debate. The second section provides for a compulsory attendance, to give information. In order to carry into effect the second section, rules somewhat like the following should be adopted by each House, *mutatis mutandis*:

"That the secretary of the Senate shall keep a notice-book, in which he shall enter, at the request of any member, any resolution requiring information from any of the executive departments, or any question

intended to be propounded to any of the secretaries, or the Postmaster-General, or the Attorney-General, relating to public affairs or to the business pending before the Senate, together with the name of the member and the day when the same will be called up.

"The member giving notice of such resolution or question shall, at the same time, give notice that the same shall be called up in the Senate on the following Tuesday or Friday: *Provided*, That no such resolution or question shall be called up, except by a unanimous consent, within less than three days after notice shall have been given.

"The secretary of the Senate shall, on the same day on which notice is entered, transmit to the principal officer of the proper department a copy of the resolution or question, together with the name of the member proposing the same, and of the day when it will be called up in the Senate.

"In the Senate, on Tuesday and Friday of each week, before any other business shall be taken up, except by unanimous consent, the resolutions and questions shall be taken up in the order in which they have been entered upon the notice-book for that day.

"The member offering a resolution may state succinctly the object and scope of his resolution and the reasons for desiring the information, and the secretary of the proper department may reply, giving the information or the reasons why the same should be withheld, and then the Senate shall vote on the resolution, unless it shall be withdrawn or postponed.

"In putting any question to the secretaries, or the Attorney-General, or Postmaster-General, no argument or opinion is to be offered, nor any fact stated, except so far as may be necessary to explain such question; and, in answering such question, the secretary, the Attorney-General, or Postmaster-General shall not debate the matter to which the same refers, nor state facts or opinions other than those necessary to explain the answer."

"These rules relate only to the execution of the last section of the bill—to giving information—to putting and answering questions. They in no wise affect the debate permitted and invited by the first section. They have been framed after a most careful examination of the rules and modes of procedure of the British Parliament and French Assembly, and are believed to contain the best provisions of both. They are framed to accomplish the purpose of obtaining the needed information with the least interference with the other duties of the heads of departments. No question can be called up unless after three days' notice to the secretaries; and the answers are limited to the specific points of the question, in order that accuracy may be attained. These rules may be amended as experience shall show their defects.

"The bill confers a privilege and imposes a duty on the heads of departments. The privilege is to give their suggestions and advice in debate, by word of mouth; the duty is to give information orally and face to face."

The limit of space will not admit of discussing this measure in detail. Those interested will find the arguments set forth in two papers* published by the American Academy of Political and Social Science. It may be here remarked that the principle is just as important in the State or city as in the national government, and that the main obstacle to its adoption in all these cases consists in the tenacious grasp of the legislature upon executive power, which is quietly acquiesced in by the people.

One more false principle remains to be noticed, as fatal in the long run to good government of any kind, the deciding of elections by a plurality of votes. The New York constitution expressly provides, in the case of the governor and lieutenant-governor, that the person having the highest number of votes shall be elected, but as to all other elective offices it leaves the question to be settled by implication or by statute. In Massachusetts, the general principle was established at one fell stroke. Up to 1854, all the elective State offices, with one or two possible exceptions, required a majority of all the votes cast. By the vote of two legislatures in 1854 and 1855 and the ratification of the people on May 23, 1855, was passed

ARTICLE XIV. In all elections of civil officers by the people of this commonwealth, whose election is provided for by the constitution, the person having the highest number of votes shall be deemed and be declared to be elected.

No longer single step downward was ever taken in the politics of the State; and it is a crucial illustration how dangerous is legislation which is not subjected to the stringent and public criticism of the executive branch which is responsible for administration. The very basis of popular government or of democracy is that the majority shall govern. To

* Publication No. 37, "Congress and the Cabinet," and Publication No. 106, "Congress and the Cabinet—II."

say that the largest of any given number of fractions shall govern is a very different thing. The superiority of the English parliamentary system over all others in Europe is precisely in this, that it has consisted of two organized and disciplined parties, whether Whigs and Tories or Conservatives and Liberals. The recent disintegration of party lines has, perhaps, caused more alarm there than any other symptom. It is admitted that the greatest difficulty with the chambers of the continent is the multitude of groups, dividing and coalescing upon the passions of the moment, but refusing to work together upon any general principle and thus making government almost impossible. Government in this country has been made possible only by placing over against the perennial Democrats a solid body, first, of Federalists, then of Whigs and lastly of Republicans. The same necessity has carried these distinctions, otherwise totally absurd, into the politics of States and cities. Instead of a combining, election by plurality is distinctly a disintegrating force. It leads every theorist who has a pet idea, female suffrage, prohibition, eight hour laws and so on, to work away in creating a new fraction in the hope that it may in time outnumber any other. It leads every rascal to work in multiplying fractions that the proportion of any one to his own may be diminished. It permits any citizen who does not fancy either of the great parties to throw away his vote upon some particular idea which strikes him as praiseworthy, without incurring the reproach of abstention. There is a great deal of talk about minority representation. Under the plurality system there is a good chance that minorities *only* may be represented. It is as necessary in a democracy as in an army, that the members should be taught that they must pull together, and the way to do this is to require a clear majority of votes at every election. The means of obtaining this is the simplest in the world, and is practiced constantly in Europe. Every undecided election is followed in a few days by a second ballot between the two highest on the previous list, when a majority

must result. The people would soon learn that they only give themselves extra trouble by scattering their votes. It is evident that this method of settling an undecided election is very different from that provided in Art. IV, Sec. 3, of the New York constitution, as to which indeed it may be thought that elections by plurality are still preferable.

In suggesting amendments to the New York constitution, only those will be indicated which are calculated to carry out the principles above laid down, and without making any distinction, which is yet sufficiently obvious, between those which might offer a possible hope of acceptance and those which in the present state of the public mind are quite beyond such a contingency. The first would be the expunging of the words in Art. IV, Sec. 3, above referred to: "The persons respectively having the highest number of votes for governor or lieutenant-governor shall be elected," and the substitution for it in its proper place of another section the exact reverse of that in the Massachusetts constitution:

> In all elections of civil officers by the people, the person having a majority of the votes cast shall be declared elected; undecided elections to be settled by a second ballot within days thereafter, between the two candidates having the highest number of votes at the first.

2. The Secretary of State, Comptroller, Treasurer and Attorney-General; also a State Engineer and Surveyor, a Superintendent of Public Works and a Superintendent of State Prisons shall be appointed by the Governor, and shall hold office during his term, unless sooner removed by him. The words "by and with the advice and consent of the senate" shall be expunged wherever they appear.

3. The Secretary of State, Comptroller, Treasurer and Attorney-General shall have the right and duty of attending the sessions on different days of the week, both of the House and the Senate, under rules to be agreed upon between the two branches, and to take part in debate relating to their

respective departments, and answer questions and give information in relation to the same; the same right and duty shall be extended to any other executive officials upon the address of the two Houses accepted by the Governor. The Governor shall himself also have the right of attendance with his subordinates and of taking part in the debate, but shall not be held to answer questions, which shall be addressed directly only to the heads of departments.

It is to be observed that this personal responsibility of the chief officials to direct cross-examination by individual members is a far greater check and security for the character of the governor's appointments than confirmation by the vote of the Senate can possibly furnish.

4. All proposals for financial legislation, whether of revenue or expenditure, shall proceed from the State Treasurer, as the agent of executive administration. Acting in concert with the other departments, he shall prepare an annual budget of receipts and expenses in detail for the financial year ending and shall place the same upon the table of the Assembly on or before the day of The Assembly may decrease, but not increase, any item of expenditure or taxation without the consent of the executive. No member shall propose any definite measure of expenditure or revenue, but either the Assembly or the Senate may, either in the discussion of the budget, or at any time during the year, pass a resolution requesting the Governor to bring forward a provision for a specified item of revenue or expenditure, and if such resolution shall be passed by both Houses, it shall be the duty of the executive to carry out the same; provided that the executive may still demand a reconsideration, after which, if the resolution is reaffirmed by two-thirds of both Houses, it shall be mandatory and final.

It will be observed that this regulation in no way diminishes the ultimate control of the finances by the legislature or increases that by the executive; it merely secures the treatment of finance as a whole and that it shall not be dis-

ordered by all sorts of proposals, coming from any members, and passed by the body without due consideration or reference to other financial conditions. The executive is a unit and represents the whole State. Members are many and represent only fractions of the State. Finance to be sound must be treated as a whole and protected from isolated and disconnected attack. While the final decision must rest with the legislature, the side of the whole public interest should be strongly presented, and the body compelled to act, if at all, under the clearly defined responsibility of its members.

Inasmuch as by the second, third and fourth amendments here proposed the unity, the strength and the responsibility of the regular executive administration, which are now almost wholly wanting, would be restored, the government by commissions might be left at least for the present to fall into disuse. There appears to be no need for a constitutional prohibition, any more than there now is for a corresponding establishment of them.

The parts of the Constitution which would need modification, to meet these requirements, appear to be, apart from those already noticed, Article I, Section 9; Article III, Section 13 and Section 19; Article IV, Section 9; Article V, Section 7.

No reference has been here made to the delicate and vexed question of the judiciary, because the present paper attempts to deal only with the relations of the executive and the legislature: and none also to the organization of the counties, because, though the numerous and separate elections appear to violate the principles herein laid down, yet they constitute a system of local government so different from the town meeting of Massachusetts that the present writer cannot venture to touch upon it.

GAMALIEL BRADFORD.

Boston.